

ORDINANCE NO. 12-38

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AMENDING CHAPTER 98 ENTITLED "ZONING", ARTICLE V. ZONING DISTRICT REGULATIONS, DIVISION 16. C-2 LIBERAL RETAIL COMMERCIAL DISTRICT, OF THE CODE OF ORDINANCES AND IN PARTICULAR, REVISING HIALEAH CODE § 98-1111 ENTITLED "PERMITTED USES" TO INCLUDE PAIN MANAGEMENT CLINICS AS A PERMITTED USE AND PROVIDE REGULATIONS INCLUDING BUT NOT LIMITED TO DISTANCE REQUIREMENTS FROM PHARMACIES OR SIMILAR USES; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in 2010 a national survey on drug abuse and health by the Substance Abuse and Mental Health Services Administration found that non-medical use of prescription drugs was second only to marijuana abuse;

WHEREAS, Florida remains the epicenter of illegal pain management clinics;

WHEREAS, the scheme to divert controlled substances to the illegal market in Florida involves the complicitous participation between rouge doctors and pharmacies;

WHEREAS, the general purpose and intent of this ordinance is to provide proper zoning regulations in the best interest of the health, safety, welfare of the community and the proper administration of its government;

WHEREAS, the specific intent and purpose of this ordinance is to identify pain management clinics as a permitted use in the C-2 Liberal Retail Commercial District, exclusive of all other zoning districts, with a 1,500-foot minimum distance separation between existing pharmacy and other pain management clinics;

WHEREAS, the Planning and Zoning Board at its meeting of May 23, 2012 recommended approval of this ordinance in substantial form.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: Chapter 98 entitled "Zoning", Article V. Zoning District Regulations, Division 16. C-2 Liberal Retail Commercial District, of the Code of Ordinances of the City of Hialeah, Florida is hereby amended, by revising Hialeah Code § 98-1111 entitled "Permitted uses", to read as follows:

Chapter 98

ZONING

* * *

ARTICLE V. ZONING DISTRICT REGULATIONS

* * *

**DIVISION 16. C-2 LIBERAL RETAIL
COMMERCIAL DISTRICT**

Sec. 98-1111. Permitted uses.

In the C-2 liberal retail commercial district, the permitted uses for land, buildings and other improvements are subject to the general conditions requiring that all storage of materials and products and all operations of work of every character are carried on entirely within the enclosing walls and under the roof of a building and the following:

* * *

(34) Pain management clinics as defined by Florida Statutes §458.3265 or §459.0137, as amended from time to time, and required to be registered with the State of Florida Department of Health, which shall be prohibited in all other zoning districts and subject to the following distance requirements:

(i) No pain management clinic shall be permitted to locate within a radius of 1,500 feet of another pain management clinic or within a radius of 1,500 feet of an existing pharmacy, or business that operates a

pharmacy within the same business location including, but not limited to, drugstores, grocery stores, supermarkets, and superstores, as measured by linear feet from the main entrance of one business to the main entrance of the other business.

(ii) No pain management clinic shall be permitted to located within the same establishment, shopping center including any outparcel, or within the same parcel or tract of land of any other pain management clinic or pharmacy.

(ii) To the extent that pharmacies are permitted to locate in this zoning district, no new pharmacy shall be permitted to locate in the same establishment, shopping center including any outparcel, or within the same parcel or tract of land, as an existing pain management clinic.

(3435) The city may use the North American Industry Classification System (NAICS) as a primary reference for interpreting the nature of the foregoing uses or similar permitted uses.

Section 2: **Repeal of Ordinances in Conflict.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3: **Penalties.**

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 4: Inclusion in Code.

The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Hialeah, as an addition or amendment thereto, and the sections of this ordinance shall be renumbered to conform to the uniform numbering system of the Code.

Section 5: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 6: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

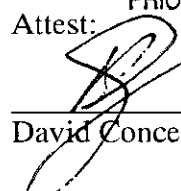
PASSED AND ADOPTED this 26th day of June, 2012.

THE FOREGOING ORDINANCE
OF THE CITY OF HIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 166.041
PRIOR TO FINAL READING.


Isis Garcia-Martinez
Council President

Attest:

Approved on this 28th day of June, 2012.


David Concepcion, City Clerk


Mayor Carlos Hernandez

Approved as to form and legal sufficiency:


William M. Grodnick, City Attorney

~~Strikethrough~~ indicates deletion. Underline indicates addition.

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Ordinance was adopted by a unanimous vote with Councilmembers, Caragol, Casals-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez, Hernandez and Lozano voting "Yes".